

12123

No. _____

Supreme Court of Illinois

Clark, Work, et al.

vs.

Sammis.

71641  7

Ralph Clark &
Enos P. Clark
vs.
Christopher Sammis

Appeal from Prairie =

And the said Sammis, appellant
comes & says, that in the records & proceedings
of said circuit court there is manifest
error, in this to wit, that the said Circuit Court
rendered judgment against the said Appellant & in
favor of the said appellee; whereas the said
court should have rendered a verdict
in favor of the said appellee & against the
said appellant = wherefore by reason of the
error aforesaid, & for other errors in the
record & proceedings aforesaid, said Appellee
prays that the said judgment may be wholly
reversed, annulled & for nothing esteemed.
By his Atty. C. Peters

And said Appellee comes & says that
in the Records & proceedings aforesaid in
said circuit Court there is no such
error as is above assigned by said
Appellant. & that said judgment
ought to be maintained & affirmed
in all respects

Manning & Minerva
Atty for Appellee

Proceedings at a term of the circuit court
begun & held at the court house in Peoria
in & for the county of Peoria in the State of
Illinois on the third Monday of August in
the year of our Lord 1852 it being the 16th day
of said Month, Present the Hon. William Kellogg
Judge of the 16th Judicial Circuit in the State
of Illinois - James L. Riggs, Sheriff -
Jacob G. Clark, to wit,

Nathl Clark &
Enos P. Clark }
vs. }
Christopher Simmons }

The said plaintiffs on the fifth day of October 1848
filed in the Clerk's office of said court, a declara-
tion in the words & figures following, to wit,

In the Peoria Circuit Court, October
Term A.D. 1848

State of Illinois, County of Peoria ss. Nathl Clark
& Enos P. Clark, plaintiffs in this suit complain of
Christopher Simmons defendant in this suit of a
plea that he render unto said plaintiffs the sum
of one hundred sixty five dollars which he
owes to & unjustly detains from them; For that

whereas the said defendant heretofore, to wit,
on the second day of October in the year of our
Lord one thousand eight hundred forty eight
at the county of Paris aforesaid was indebted
to said plaintiffs in the sum of one hundred & fifty
five dollars for the goods, wares & merchandise
before that time sold & delivered by said Plaintiffs
to said defendant at his request. Also for so much
money before that time lent & advanced to said
defendant at his request by said plaintiffs, also for
money before that time paid laid out & expended
for said defendant & at his request by said Plain-
tiffs, Also for money before that time paid
& received by said defendant for the use of said
plaintiff; also for so much money found to be
due & owing to said plaintiffs & from said defendant
upon an account then stated between them -
Also for interest upon & for the loan of moneys
and of various large sums of money for long
space of time before then elapsed by said Plain-
tiffs to defendants & then due & owing from de-
fendants to Plaintiffs - said sum to be paid by said
defendant to said plaintiffs when the said de-
fendant should be thereto afterwards requested -
whereby, & by means of said sum of money being &
remaining wholly due & unpaid, an action
hath accrued to said plaintiffs to demand & recover
of & from said defendant the said sum of money

above demanded, ^(a) yet the said defendant although
often requested so to do has not as yet paid the ~~sum~~
sum of one hundred & sixty five dollars & above
demanded or any part thereof to the said plain-
tiffs, but to do this has hitherto wholly refused &
still refuses, to the damage of said plaintiff
of one hundred & sixty five dollars, therefore
they bring their suit &c.

H. O. & A. L. Meniman Attys. for Plff.

a. And said plaintiffs further aver that the above
cause of action accrued in the State of New York
& that the legal rate of interest in said State is
Seven per centum per annum.

And afterwards at the August term of the said
court, by leave of the court for that March first
held, the said plaintiffs filed in said court an amend-
ment to their declaration in the words & figures
following to wit,

Color et al. v. Meniman "a"

And said plaintiffs by way of amendment to said
declaration further avere that the said indebtedness
above alleged was contracted by said defendant
in the State of New York, where said plaintiffs then
& now reside - & the existence of the Statutes & laws
of said State of New York, then & now existing said
plaintiffs are entitled to interest on said debt
from and after the time said sums of money be-
came due & payable according to the terms of

said contract, at the rate of seven per cent per annum.

H. O. A. Menimon

And on the 27th day of July A.D. 1849, the said defendant filed in said cause his pleas, which are in the words & figures following, to wit,

Ralph Clark & Enos P. Clark

vs.

Chas^r Sammis

} C. C. Prouin Co.

And the said Sammis comes & defends se. when se. & says he does not owe the plffs. in manner & form as the plffs. in their declaration have alleged against him; & of this he puts himself on the country. By his Attorneys Peters & Knowlton and Plffs. do the like by Menimons for Plffs.

(this (the following) plea substituted for 2^d (original) plea) and for for the plea in this behalf, said deft says action non, because he says, that before the June Term in the year of Our Lord eighteen hundred & forty eight of the circuit court of the United States in & for the District of Illinois, Joshua R. Baldwin, Ezra R. Odell & John C. Worth, partners in trade in the city ^{1st state} of New York, impleaded the said deft. in the said court of the United States (the said court then & then having jurisdiction of said cause) for the identical causes of action in the plaintiffs declaration mentioned herein; & in the said court, then & then so having jurisdiction, afterwards, & wit, at the said June Term of said court, such proceedings were had, that

the issues joined in said cause (said promises in
the declaration mentioned filed herein being put in
issue thereby) between the said Baldwin, Gibble &
Work, the said defendant (being the deft. herein) came
on to be tried by a jury, then & then duly empannelled
for that purpose - and the said jury so empannelled,
afterwards, at said term of said court of the United States,
rendered their verdict in said cause, & upon said
issues in favour of said Baldwin, Gibble & Work, &
against the said Sammis for the sum of one
thousand eight hundred & thirty two
cents for their damages by reason of the non-
performance of the promises of the said deft. in
the declaration mentioned, a part of which promises
were the identical promises in the declaration men-
tioned, & for the same goods, wares & merchandise
in the declaration herein mentioned; which verdict
so rendered as aforesaid was affirmed by the said
court at the same term thereof; and thereupon &
thereafterwards such further proceedings were had
in the said court, that judgment was therein ren-
dered upon the said verdict, the record of which
judgment & proceedings is in the words & figures fol-
lowing, to wit, "whereupon (that is, after the rendition
of the said verdict meaning) the defendant by his
counsel moves & enters his motion for a new trial
herein; and thereupon with the permission of the court
the plaintiff's counsel entered a submission of one

hundred & ninety one dollars & forty eight cents, the
balance of accounts & interest due to Ralph Clark
Esq. & Clerk, Wash D.C. as stated in the proofs on file
in this cause; the court deciding that said accounts
are not properly chargeable by the Plaintiffs
against said defendant - and the court thereupon over-
ruled the motion for a new trial. It is therefore con-
sidered & adjudged by the court that the said Plain-
tiffs recover of & from said defendant the sum
of eight hundred & ninety four dollars & eighty four
cents for their damages, together with their costs &
charges by them about their suit in this behalf
expended & to be taxed & that they have execution
therefor" as by the record thereof remaining in
said court fully appears - which judgment has
never been reversed, annulled or set aside -
but the sum of money for which said judgment
was rendered together with the costs taxed by
virtue thereof has been fully paid & satisfied by
the said defendant. And this defendant avers that
the promises & debt for which he is impleaded
herein, are in part the identical promises & debt
for which he was impleaded in said Circuit Court
of the United States as aforesaid, & for & upon which
the said verdict was rendered - & in that suit he
was impleaded for the whole of the promises &
debt for which he is impleaded herein; & the said
verdict was rendered for the whole of said prom-

ises for which he is herein pleaded, and the said
deft. further avers that the plaintiffs therein, the
said Baldwin, Dibble & Work had full power & au-
thority, to continue the said claim or demand &
claimed to be the owners of said causes of action &
were fully authorized in their own names to sue
for & collect the same, & to remit of the said verdict
as appears in & by the said verdict - & this defend-
ant further avers, that on the trial of said issues,
proof was given by the plaintiffs, to prove, sustain &
establish the causes of action in the declarations
herein mentioned, & the same were allowed by the
jury & included in their said verdict - & that the
Deft. is ready to verify - wherefore he prays judgment,
Peter & Newton for Deft.

And for further plea said Deft. says actio non, be-
cause he says that herebefore, to wit, in the year 1848
Joshua R. Baldwin, Ezra R. Dibble & John C.
Work partners in trade in the city of New York, im-
pleaded the said Deft. in the circuit court of the
United States for the District of Illinois, in a certain
plea of trespass on the case on promises, the said
court having jurisdiction thereof - & afterwards such
proceedings were had in said suit, that at the term
June Term thereof A.D. 1848, at Springfield in said
State and District of Illinois, that the issues in
said suit were tried by a jury, who rendered a
verdict therein, that they found for the p[er]s. & es-

assessed their damages, at the sum of one thousand
eighty six dollars & thirty two cents - & thereupon at
the same term, the said court, so being joined in
their, rendered judgment upon the said verdict,
that the said plaintiffs, to wit, Baldwin Dibble &
Worth recover of said Def. the sum of eight hun-
dred & ninety four dollars & eighty four cents for
their damages therein; which judgment hath
never been reversed or annulled - as by the record
in said court remaining more fully appears - & the
Def. avers that the promises & undertakings in
the declaration in this suit mentioned & the causes
of action herein, are the same promises & con-
ditions & the same causes of action, mentioned
said for & adjudicated upon in the said suit in the
circuit court of the United States - & the said Bal-
dwin Dibble & Worth, acting with full power &
authority to sue for & recover the same, & with the
consent & under the direction of the Plaintiffs herein
herein, commenced the said suit, & recovered the said
judgment; & the causes of action in this suit were
fully considered, tried & determined upon in the
said trial, & the claim sought to be recovered herein,
was fully allowed by the jury on said trial - &
this the def. is ready to satisfy - wherefore he prays
judgment &c. By his Atty, Peters & Knowlton &

And for further plea in this behalf, Def.
says actis non, because he says, that before the

commencement of this suit be fully paid & satisfaction to the plaintiffs the said several supposed causes of action in their said declaration mentioned - & this he is ready to verify & pays judgment &c.

By Peter H. Newell -

And for further plea, said Def. says unto men because he says that the supposed agreements & considerations in the declaration mentioned, were made without any good, valuable or legal consideration whatsoever thereof, & this he is ready to verify - wherefore he pays judgment &c. By his Atty. Peter H. Newell. And afterwards the said Plaintiffs filed in said court replications & defenses pleas, which are in the words of Equity following, to wit,

Ralph Clark & als	} Pecuniary Lien suit Court, Aug. T. 1850
vs.	
Christopher Sammis	

And for further replication to said second plea of said Defendant, by him above pleaded said plaintiffs say, praeter alia non, because they say, there is no such record of the said proceedings verdict & judgment in said second plea mentioned in favor of said Baldwin, Fille & Work & against said Defendant in said Pecuniary Lien suit of the United States, within for the District of Illinois in manner & form as in & by said plea is alleged, & this the said plaintiffs pray may be enquired of by the court - H. O. Sch. Kaimann for Plffs. -

Ralph Clark
Enos P. Clark

or,

Christopher Loomis

Plavin Loomis & Loomis, Attys
at Law 1851-

And said Plavin Loomis by way of
Replication to said defendants answered said
plea say precludi non, because they say that the said course
of action described in the declaration in this
suit were not in issue in the said action in the
circuit court of the United States within & for the
District of Illinois wherein Baldwin, Osbelle & Worth
were plaintiffs & said Defendant was defendant,
nor was said defendant in that action impleaded by
the whole or any part of the courses of action com-
plained of in the said declaration in this cause in
manner & form as the said defendant has done
happ in said plea alleged - & of this said plaintiffs
put themselves upon the country -

H. B. & A. L. Loomis Plavin Loomis Attys

Def. Loomis - P. O. Blalocky =

And for further replication to said defendants
said plaintiffs say precludi non, because they
say, that the said Baldwin, Osbelle & Worth did
not own or have full power & authority to
contract sue for in their own names, or discharge
the said courses of action complained of in this
suit in manner & form as in said defendants
is alleged & set forth & of this the said plaintiffs put
themselves upon the country - H. B. & A. L. Loomis
Def. Loomis P. O. Blalocky = Plavin Loomis

And for replication to said demurred plea, said
plaintiffs say precludi non, because they say
that after the said verdict was rendered in said
cause in said circuit court of the United States in
favor of said Baldwin, Dibble & Work & against
said Defendant, & before said judgment was ren-
dered therein said Baldwin Dibble & Work, re-
mitted from said verdict the demand said for
in this suit, & did not recover judgment on the
causes of action complained of in this suit - & that
the said plaintiffs are ready to verify - wherefore they
prayer judgment in F.D. & A.S. Meritum Pffs. Attys.
To which last replication the Deft. filed a demurrer
which is in the words & figures following to wit-

And on the 26th day of said August, 1852
the following proceedings were, had, to wit
Ralph Clark &
Ernest P. Clark

vs.

Christopher Sumner

This day came the Plaintiffs
by H. O. Morrison their Attorney & the Defend-
ant by Ashew Peters his Attorney & waived a
trial by a jury & agreed that all matters both
of law & fact arising in this cause shall be tried
by the court - whereupon the court having heard
the evidence of the parties respectively, do find
that the said Christopher Sumner does owe
to the said Ralph Clark & Ernest P. Clark the
sum of one hundred & twenty three dollars
fifty one cents & do assess their damages for
the detentions thereof to the sum of sixty nine
dollars & sixty nine cents - Therefore it is con-
sidered that the said Ralph Clark & Ernest P.
Clark have & recover of the said Christopher
Sumner the sum of one hundred & twenty
three dollars & fifty one cents their debt aforesaid
& the sum of sixty nine dollars & sixty nine cents
their damages aforesaid, together with their
costs & charges by them about their suit
in this behalf expended & that they have Execu-
tion therefor - The defendant prayed an

appeal from this judgment to the Supreme Court of this state, which is allowed. And on his filing in thirty days in the office of the Clerk of this court an appeal bond payable to the plaintiffs in the penal sum of three hundred dollars, with Cuslow Peters as his surety & undisturbed according to law;

and on the 9th day of September 1852 said Sumner's filed in the Clerk's office of said court an appeal bond, in the words & figures following to wit,

Know all men by these presents that we Christopher Sumner as principal & Cuslow Peters as surety of the county of Peoria & State of Illinois, are held & firmly bound unto Ralph Clark & Enos P. Clark, in the penal sum of three hundred dollars for the payment of which well & truly to be made we bind ourselves, our heirs, executors & administrators, jointly & severally & firmly by these presents. Witness our hands & seals, this seventh day of September. A.D. 1852.

The condition of the above obligation is such that whereas the said Ralph Clark & Enos P. Clark did on the 26th day of August A.D. 1852 in the Circuit court in & for the county & State aforesaid pronounce a judgment against the above bounden Christopher Sumner for the

sum of fifty nine dollars & sixty nine cents
damages & the further sum of one hundred
& twenty three dollars & fifty one cents, debt
of the costs - ^{from} which said judgment of the
said Circuit Court, the said Christopher
Sammons has paid for & obtained an ap-
peal to the Supreme Court of said State.
Now if the said Christopher Sammons
shall duly prosecute his said appeal with effect
& shall moreover pay the amount of the
judgment, costs & interest & damages rendered
to be rendered against him in and on the
said judgment shall be affirmed in the said
Supreme Court, then the above obligations
to be void, otherwise to remain in full
force & virtue

Chas Sammons Esq
Andrew Peters Esq

State of Illinois, } ss.
Peoria County, } V. Jacob Gale, clerk of the Circuit Court
in and for the county of Peoria, in the
State of Illinois, do hereby certify, that the above and fore-
going is a true and correct copy of proceedings had
in a certain suit wherein Ralph Clark & Enos P. Clark
are plaintiffs and Christopher Sammons is defendant,
as the same appears on file and of record in my office,
In Witness whereof, I have hereunto set
my hand and affixed the seal of said court
at Peoria this eleventh day of June A.D.
1853. Jacob Gale. Clerk.

pieces of cloth. \$4.17

54.
Transcript of Record
Boal & Enos P. Leland
att.
Chas. Leland

Record & Errors.
Filed June 14th 1853.
L. Leland Clk.
By P. H. Leland Depy.

Ralph Clarke
Enos P. Clarke

^{vs}
Christopher Sammis

} Sup Court —
Appeal from Pavia

} And said appelle
comes and says that in the Records and
proceedings aforesaid in said Circuit
Court there is no such error as is
assigned by said appellant. —

Manning & Minner
Atty for appelle

Ralph Clark and

vs

Christopher Sammis

Joiner in error

Filed June 14. 1854.
S. Ireland Clk.

Christopher Sammis } appl. from Penna
 54. }
 Ralph Clark bal. } appl. dipd.
 applts. costs-

Fil. read & eners 20, apper. 25, Dh. cance 10, .55-
~~Pauline joining L. upper~~
~~no. to chp. applt.~~ 25, Ent. deflt. 25, Qd. revg. 25, .75-
 Ent. jndr. 25, Dh. jndr. 25, Qd. for extra. 25, ~~copy of jndr. 25, 0.75-~~
~~Cost of read & eners~~ extra. 25, fil. & Dh. 15, Slpps. extra. 10, .50
 bill of costs 25- copy 25- Dh. for 125, ent. sat for. 25, 2.00
 Circuit Clk. Jan sept.

4.17
~~9.49~~
 8.72
 4.17
4.55-

No. 54 & 55

Bill of costs—

Clark, Work & others } Appeal from Pelican
 vs.
 Christopher Sammis }

And the said Sammis
 the appellant comes & says that in the record &
 proceedings aforesaid, & in the rendition of the
 judgment aforesaid, there is manifest error
 in this Court, the said Circuit Court should
 have rendered a judgment in favour of said appellant
 & against the said appellee.

wherefore for the errors aforesaid, & for the
 errors in the record & proceedings aforesaid
 said appellant prays that the judgment aforesaid,
 may be wholly reversed & annulled &
 for nothing intended. —

By his Atty. Cuslow Peters

And said appellee comes & says that in the
 Record & proceedings & in the rendition of
 said judgment there is no such error
 as is above assigned by said appellant
 & that said judgment ought to be
 maintained & affirmed —

Naming & Naming
 Atty for Appellee —

State of Illinois,) ss.

County of Rona, } Ralph Clark, Enos J. Clerk, Frank Mack,
Do. Hiram, Isaac &c.

$$[12123=13]$$

Whereby and by reason of the said sum of money being & remaining wholly due and unpaid an action hath been
brought to the said plaintiffs to demand and have and
from said defendant the said sum of money above dem-
anded, and said plaintiffs further aver that the
above cause of action accrued in the State of New York,
and that the legal rate of interest in said State, ^{is} and when
said cause contract was made seven per centum per
annum.

Yet the said defendant although often requested
has not as yet paid the sum of one hundred dollars
above demanded or any part thereof to the said plain-
tiffs, but he to do this has hitherto wholly refused and
still refuses to the damage of said plaintiffs of one hun-
dred dollars and therefore they bring their suit &c.

H. W. & A. L. Merriman.

Attys for Plffs.

And afterwards the said Defendant Christopher
Sammis, filed in said cause, his pleas which are
in the words & figures following, to wit,

Ralph Clark Esq, Clerk
Bank Note, Isaac Heydon
& Samuel McLean

Jurors Court, Rensselaer county

Christopher Sammis

(1) And the said Sammis comes and
defends, where he says he does not owe the plffs in
manner and form as the plffs in their declaration
have alleged against him & of this he puts himself
on the country By his Attys

Wm. H. Houlton

And for further plea in this behalf said defendant says *Actio non*, because, he says, that heretofore to wit: before the June Term of the Circuit Court of the United States for the District of Illinois 1848. Joshua R. Baldwin, Ezra H. Gibble & John C. Work, impleaded the said Deft.ⁱⁿ said Circuit Court of the United States, in a plea of trespass on the case on prom-
 is, the said United States court having jurisdiction thereof, and afterwards, to wit: at the said Term of said United States court such proceedings were had that a trial was had between the said parties and a verdict of the Jury was rendered in favor of the said Baldwin, Gibble & Work for the sum of one thousand & eighty six dollars & thirty two cents for their damages by them sustained and thereupon the said United States court rendered a judgment upon the said verdict in favor of the said Baldwin, Gibble & Work against the said Deft for the sum of eight hundred & ninety four dollars & eight four cents for their damages in said suit as by the record thereof in said cause remaining more fully appears. And the said Deft further avers that the causes of action in the said United States court are & were the identical causes of action in the ^{off}plea declaration in this suit mentioned and the said causes of action were submitted to, considered & allowed by the Jury in said verdict & at the time of the commencement of said suit & of the rendition of the judgment in said United States court the said Baldwin, Gibble & Work were the owners of the said causes of action and then ^{and} ~~at~~ there claimed to be the owners thereof and the said promises in the declaration herein were made to the said Baldwin, Gibble & Work & the same were fully tried, determined

and adjudicated upon in the said action in the said court of the United States - and the deft & this the deft is ready to verify, wherefore he prays Judge &c.

(3) And for further plea said deft says Action non, because he says, that heretofore, to wit: in the year 1848 Joshua R. Baldwin, Ezra N. Dibble and John C. Work partners in trade in the city of New York impleaded the said deft in the Circuit Court of the United States for the District of Illinois in a certain plea of trespass on the case on promises, the said court having jurisdiction thereof, and afterwards such proceedings were had in said court that at the June Term thereof A. D. 1848, at Springfield in said State & district of Illinois that the issues in said suit were tried by a Jury who rendered a verdict ^{therein} that they found for the said plaintiffs and assessed their damages at the sum of one thousand eighty six dollars & thirty two cents - and thereupon at the same term of said court so having jurisdiction thereof rendered a Judgment upon the said verdict that the said Plffs, to wit: said Baldwin Dibble & Work recover of said deft the sum of eight hundred & ninety four dollars & eighty five cents for their damages therein, which judgment hath never been reversed or annulled as by the record in said Court remaining more fully appears. And the deft avers that the promises or undertakings in the declaration in this suit mentioned and the causes of action herein, are the same promises & undertakings & the same causes of action mentioned, sued for & adjudicated upon, in the said suit in the Circuit Court of the United States, and the said Baldwin, Dibble & Work, acting with full power & authority to sue and recover the same, & with the consent & under the directions of the plaintiffs herein commenced the said suit & recover

ered the said Judgment & the causes of action in this suit were fully considered, tried & determined upon, in said trial & the claim sought to be recovered herein was fully allowed by the Jury on said trial, and this the defr is ready to verify, wherefore he prays Judgt &c.
By his Attys
Peters & Knowlton.

4 And for further plea in this behalf, defr say actio non because he says, that before the commencement of this suit he fully paid & satisfied to the plffs the said several supposed causes of ^{action} causes in their said declaration mentioned & this he is ready to verify, & prays Judgt &c.
By Peters & Knowlton.

5 And for further plea said defr says actio non because, he says that the supposed agreements & undertakings in the declaration mentioned were made without any good, valuable or legal consideration whatsoever, therefore & this he is ready to verify - wherefore he prays Judgt &c.
By his Attys
Peters & Knowlton.

And on the 9th day of September 1850 said Plffs. filed their replications in the words & figures following & wit

Ralph Clark, Enos Clark, Frank Work
Isaac Osgood, & Samuel M^r Sean

Peoria Circuit Court
Aug. Term, 1850

vs
Christopher Sammis

And said plaintiffs for Replication to said second plea of said defendant above pleaded says

precludi now because he says that the said Baldwin, Dibble & Work did not recover judgment against said defendant in the circuit court of the United States, within & for the district of Illinois for the identical cause of action, claimed and described in the declaration in this suit in manner & form as said defendant has is in and by said second plea alleged and of this the said plaintiffs put themselves upon the country

And for further replication to said second plea said plaintiffs by leave of the court for that purpose first had and obtained say ~~Precludi now~~, because they say that the said Baldwin, Dibble & Work did not have full power & authority to sue for & recover judgment for the causes of action stated in the declaration on file in this cause in their own names in manner and form as in said plea is alleged and of this the said plaintiffs put themselves upon the country

H. C. & A. L. Merriman
for Plffs.

And the defr likewise

By Peters & Knowlton.

And ^{affirmed} ~~on the 1st day of September 1852~~, the said Plffs filed the following applications in said court, to wit

Ralph Clark, Enos P. Clark, Frank Work	
Isaac Legood & Samuel M ^c Lean	Penal Court Court
vs	May 7. 1851.
Christopher Hammis	

And said plaintiffs for replication to said defendants amended plea say ~~Precludi now~~

because they say that the said causes of action described in the declaration in this suit were not in issue were not in issue in the said action in the circuit court of the United States, within and for the District of Illinois, where in Baldwin, Dibble & Work were plaintiffs and said defendant was defendant, nor was said defendant in that action impleaded for the whole or any part of causes of action complained of in said declaration in this cause in manner & form ~~as~~ as said defendant has in his said plea alleged and of this said plaintiffs put themselves upon the country &c.

W. C. & A. L. Merriman.

And for further replication to said amended plea of said defendants, said plaintiffs by leave of the court for that purpose first had and obtained say preclusion, because they say that the said Baldwin, Dibble & Work did not own or have full power or authority to control, sue for in their own names or discharge the said cause of action complained of in this suit in manner & form as alleged in said amended plea is alleged and set forth and of this said plaintiffs put themselves upon the country &c.

W. C. & A. L. Merriman
Plffs & Atty's.

And for further replication to said amended plea said plaintiffs say preclusion because they say that after the said verdict was rendered in said cause in said circuit court of the United States in favor of said Baldwin, Dibble & Work and against said defendant and before said judgment was rendered therein said Baldwin, Dibble & Work

remitted from said verdict the demand sued for in
this suit did not recover judgment for the causes
of action complained of in this suit and this the said
plaintiffs are ready to verify, wherefore they pray judg-
ment &c. H. O. & A. L. Merriman
Plffs Attys.

Proceedings at a term of the Circuit Court begun and
held at the court house in Keosauqua, in and for the county
of Keosauqua in the State of Illinois, on the third Monday of
August in the year of our Lord one thousand eight
hundred and fifty two, it being the sixteenth day
of said month, Present the Honorable William
Kellogg, Judge of the Tenth Judicial Circuit,
in said state, James L. Riggs, Sheriff and Jacob
Gale, clerk, to wit:

Thursday August 26th A.D. 1852,
Ralph Clark, Enos P. Clark
Isaac Usgood, & Samuel McLean

vs Debt.
Christopher Hammis.

This day came the plaintiffs by
H. O. Merriman, their attorney, and the defendant by
Anselm Peter his attorney, and waived a trial by Jury
and agree, that all matters both of law and fact
arising in this cause shall be tried by the court,
whereupon the court having heard the evidence do find
that the said Christopher Hammis does owe to the
plaintiffs the sum of sixty one dollar and ninety
nine cents, and do assess their damages for the
detention thereof to the sum of one cent. Therefore it
is considered that that the said Ralph Clark,
Enos P. Clark, Isaac Usgood, and Samuel McLean

have and recover of the said Christopher Hammis Hammis the sum of sixty one dollars and ninety nine cents, their debt aforesaid and the sum of one cent their damages aforesaid together with their costs and charge by them about their suit in this behalf expended, and that they have execution therefor - The Defendant prayed an appeal from this Judgment to the Supreme Court of this State, which is allowed upon his filing an appeal bond payable to the plaintiffs in the penal sum of one hundred and fifty dollars in the office of the Clerk of this Court in thirty days, with Enslow Peters, as his surety and conditioned according to law. By agreement of Parties the bill of exceptions in this cause may be signed by the Judge in vacation

And on the 8th day of September 1852, the said Hammis filed in the Clerk's office, an Appeal bond in the words & figures following to wit -

Know all Men by these presents, that we Christopher Hammis as principal and Enslow Peters, as surety, of the county of Peoria and State of Illinois, are held and firmly bound unto Ralph Clark, Erast. Clark, Frank Work, Isaac Osgood and Samuel M^cLean, in the penal sum of one hundred and fifty dollars for the payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents. Witness our hands and seals this seventh day of September A.D. 1852.

The condition of the above obligation is such that whereas the said Ralph Clark, Erast. Clark, Frank Work, Isaac Osgood and Samuel M^cLean did on the twenty sixth

day of August A. D. 1852 in the Circuit Court in and for the county and state aforesaid, recover a judgment against the above bounden Christopher Hammis for the sum of sixty one dollars and ninety nine cents, debt, and the further sum of one cent damages and the costs: from which said judgement of the said circuit court the said Christopher Hammis has prayed for and obtained an appeal to the Supreme court of said state.

Now if the said Christopher Hammis shall duly prosecute his said appeal with effect, and shall moreover pay the amount of the judgement, costs, interest, and damages rendered and to be rendered against him, in case the said judgement shall be affirmed in the said Supreme Court, then the above obligation to be void, otherwise to remain in full force and virtue.

Chris Hammis (seal)
Onslow Peters (seal)

State of Illinois,)
Tioria County, ss. } J. Jacob Gale, clerk of the circuit
Court in and for the County of Tioria,
in the State of Illinois, do hereby certify that the above
& foregoing is a true & correct copy of proceedings had
in a certain cause wherein Ralph Clark, Enos T. Clark, Frank
Mook, Isaac Legood and Samuel M^cLean were ^{plaintiffs} ~~com-~~
~~plainants~~ and Christopher Hammis was defendant as
as the same appear on file and of record in my office.
In Witness whereof, J. Jacob Gale, clerk of
the said circuit court have hereunto set my
hand and affixed the seal of said court
this eleventh day of June in the year

of our Lord one thousand eight hundred
and fifty three

Jacob Gale, clerk,

Collected for }
this record } 3.05-

Manuscript of Record
Clark, word itals
a do.

Chas. Sammis -

Record & errors
Filed June 14th 1853.
L. Leland Clk.
By P. K. Leland Dep.

Christopher Sammis
 " " }
 Ralph Clark &
 Erwin P. Clark }
 appellants

No 54

Appeal from Pavia

Christopher Sammis
 " " }
 Ralph Clark
 Erwin P. Clark
 Frank W. W. }
 Isaac Asgood }
 Samuel M. Lean }
 appellants

No 55

Appeal from Pavia

In the Supreme Court
 of the State of Illinois
 June Term 1853

A. D. Munroe being first duly
 sworn deposes and says that he was
 one of the attorneys for said appellants
 in the prosecution of said suits in
 the Pavia Circuit Court - that he was
 also one of the attorneys employed to
 defend said cases in the Supreme
 Court. That Onslow Peters is the acting
 attorney for said appellants in said
 suits in this court - that H. O. Munroe
 one of the attorneys for said appellants
 and associated with deponent in
 said suits has been absent from
 this state for some months
 last past and is still absent by
 reason of the ill state of his health.
 That said H. O. Munroe and said
 Onslow Peters tried said cases in the
 circuit court - that in the month
 of June last past and on the day that
 said Peters left Pavia to attend this

Court. as he said in former deponent said
Peter applied to deponent to agree to
continue said cases until the next term
of this Court alleging as a reason therefor
that he had certain understanding and
agreements with said H.O. Munnican
in relation to said cases and to the
preparing a Bill of Exceptions, ~~the~~
or agreed state of facts to be used upon
the hearing of these cases in this
Court - and which agreed state of facts
could not be found without ~~the~~ a
personal interview with said
H.O. Munnican -

Deponent further states that he
declined to agree to the continuance
of said cases until the next term
of this Court but made answer to
said Peter in substance
that he expected H.O. Munnican to
return in a few weeks, and that he
would agree to continue said cases
until the said H.O. Munnican should
return and remarked at the same
time in substance that he (deponent)
could not attend the said Superior
Court well at this time and that
therefore he would not give the said
cases any attention at this time until
the said H.O. Munnican should return -
Said Peter replied that he did not like
to be detained at Ottawa to await the
return of said H.O. Munnican, to which
deponent further agreed that in case
said H.O. Munnican should not return
by the time that said Peter should
conclude his other business at Ottawa
that said cases might stand as

continued for the present time - to
which last suggestion of defendant,
defendant understood said Peter to
agree, and consequently defendant did
not attend said court and as he is informed
said cases were moved by default of
the appearance of said appellees -
defendant further states that said
J. J. McMillan has not as yet returned
to this state - but still remains absent therefore
in described manner to be made
on this 10th day of July A.D. 1837 } C. J. McMillan
S. H. Treat C. J.
sup Court.

54 & 55

Summit

to 54.55

Clark & al

Filed July 19. 1853

L. Leland Clerk
By J. K. Leland Dep.

~~\$35563~~
Christopher Thomas
vs
Ralph C. Smith

54 V V V

12/23

1853

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